# Supreme Court of the United States.

NO. 124.

THE FRENCH-GLENN LIVE STOCK CO.,
Plaintiff in Error,

vs.

ALVA SPRINGER.

## DEFENDANT'S BRIEF.

### Statement of the Case.

This is an action in ejectment. In April, 1877, a government survey was made of certain lands in Harney County, in the State of Oregon, and a meander line was established around what is called on the maps and plats, Malheur Lake. That survey also established the lines of the lots hereinafter described. In 1889 the plaintiff's grantor purchased from the State a small tract of swamp land described as lot 3, of section 34, and in 1890 another tract of the same kind of land known as lot 4, in section 34, and lots 1 and 2, in section 35. These lots lie just outside this meander line as located along the south side of Malheur Lake, as it appears on the maps and plats, and immediately north of them, inside of the meander line, is the property in question in this case.

These lots were patented to the State as swamp land, after plaintiff's grantors had purchased them from the State. That purchased in 1889 was patented in 1890, and that purchased in 1890 was patented in 1895. The defendant went upon the land involved about nine years before this action was begun, fenced it in, built a small house, and has made it his home ever since.

The plaintiff, being thus the owner of these few acres, lying as a narrow strip along the meander line, by virtue of that ownership claims title to all the land in front of its possessions, inside the meander line, to the centre of a lake as represented on the maps and plats made from the survey of 1877, as above referred to, and under that claim brings this action.

The plaintiff, after introducing its muniments of title—the government survey, showing the location of the meander line, and the government maps and plats, showing Malheur lake, as if bounded by the meander line and covering the land in question—introduced oral evidence for the purpose of showing that in 1877 the lake was, in fact, as represented on the maps and plats, and that since that time the water had receded, exposing the land in controversy. The defendant introduced evidence showing that there was no lake in front of the plaintiff's land, and never had been; that at most a part of it was but a swamp during a part of the year, and the remainder was hay land, and that all of it was sometimes temporarily covered with water during the spring thaw or in times of unusual high water; that Malhuer lake was away off, a mile and a half or two miles to the northeast, *and that if the east and west lines of plaintiff's land were extended indefinitely neither of them would come within a mile and a*

*half of the lake.* The case was submitted to the jury upon the issue of fact *as to whether there was any lake* in front of plaintiff's lots; the jury found there was *not*, and returned a verdict for the defendant.

The case went to the Supreme Court of the State of Oregon on a bill of exceptions (p. 14 *et seq.* of the Record) taken by plaintiff and was decided in favor of this defendant, on the ground that if there was no lake at all which could be the natural boundary, then resort must be had to the meander line as evidence of what was the boundary, and that the government and its grantees could not because of a represented meander line be precluded from showing that there was in fact no lake whatever, and that, therefore, the question of lake or no lake was properly submitted to the jury, and the jury's finding of fact was conclusive (pp. 55–57 *et seq.*, Record).

The case comes here on writ of error. The errors assigned will be found on page 62 of the Record.

## ARGUMENT.

### I.

This Court has no jurisdiction.

### II.

The maps and plats introduced in evidence are not conclusive as to the existence or non-existence of a lake in front of the plaintiff's lots as shown by them.

III.

The instructions given by the trial Court were fair and without error.

I.

WE THINK THE COURT IS WITHOUT JURISDICTION, BECAUSE, UNDER THE PLAIN LANGUAGE OF THE JUDICIARY ACT AND, AS WE UNDERSTAND ITS INTERPRETATION BY THIS COURT, THE RECORD DOES NOT SHOW THAT THE VALIDITY OF ANY FEDERAL LAW OR DEED WAS DRAWN IN QUESTION.

Plaintiff's title originates in the Swamp Land Act of 1860. That is a Federal act, but its validity, construction and interpretation are not drawn in question. We admit its full force and effect.

The evidence of its title are the United States patent to the State in conformity with the granting act and a deed from the State of Oregon.

The first is a Federal muniment of title; but it is not disputed, no interpretation of it is asked. Its validity is in no way whatever drawn in question.

An incident of this patent is the plat or survey, showing a certain meander line.

This meander line is not disputed or in any way attacked, its *validity* is not drawn in question.

What is drawn in question? It is whether or not there was at the time of grant or survey a lake, forming part of a boundary line, as shown by the plat. This goes not to interference with plaintiff's title, as

shown by the plat. His title by the plat is admitted. But we object to his going beyond the meander line, as platted, in order to take in exterior lands, which, if there had been a lake as platted, he might be entitled to, but there being no lake as platted, he is not entitled to. The whole question is one of disputed boundary and is a question of fact for the jury. *If* there was a lake as platted, the instructions of the *nisi prius* Court and the decision of the Supreme Court of Oregon give the disputed land to the plaintiff, following the decisions of this Court.

If this decision draws in question the VALIDITY of any Federal Constitution, Statute or Act, then, as was said by this Court in Moreland vs. Page (post), every case of land title, which anywhere touches a question of Federal survey or boundary, will be appealable to this Court. To us it seems a mere question of boundary or survey. Within the spirit of the Judiciary Act, no Federal question is involved, no right founded in federal authority is invaded.

The act of Congress is not disputed, nor the patent, nor the right to make the survey, nor the conclusiveness of the survey, nor the validity of title; only in settling a disputed boundary, it becomes necessary to show error in the survey. We await the decision of this Court as to whether that is a Federal question.

Lanfear vs. Hunley, 4 Wall., 204.
Moreland vs. Page, 20 How., 522.
Barbarie vs. Mobile, 9 How., 451.
Almonester vs. Kenton, 9 How., 1.

The decision here complained of was made in accordance with the rules of general jurisprudence.

City of New Orleans vs. New Orleans Water Works Co., 142 U. S., 79.

It is apparent from the pleadings and such evidence as is quoted in the bill of exceptions that plaintiff had the very land in question pointed out to him and recommended as an available site by Peter French, president of the plaintiff. The jury may have decided the case upon this ground, although it is not clear from such of the evidence as is given whether plaintiff had title to lots 3 and 4 when the acts set up as estoppel occurred. The rule is well settled that even though a Federal question is involved, if the decision might have passed off on other grounds, this Court will not review it (see pp. 5, 17, and bottom line, p. 50, of the Record).

## II.

## THE MAPS AND PLATS INTRODUCED IN EVIDENCE ARE NOT CONCLUSIVE AS TO THE EXISTENCE OR NON-EXISTENCE OF A LAKE IN FRONT OF PLAINTIFF'S LOT.

The general rule, as we understand it, is:

1st. Neither the Government nor its grantees can ordinarily dispute its own maps and plats to the injury of a *bona fide* purchaser who relied upon them.

2d. A meander line is a surveyor's average line with respect to the sinuosities of the natural water line drawn as a basis of measurement of the quantity of upland contained in a lot bounded by a body of water. When there exists the body of water assumed to exist

by the fact that a meander line has been delineated on the surveyor's map this body of water or its centre is the boundary of the land, both upland and water-bed, which is contained in the riparian lot. But when there does not exist the body of water assumed to exist there is no water-bed land which can be included in the supposed riparian lot.

But existence or non-existence is very different from variation. Had there been a lake in front of these lots of plaintiff at the time of the survey, which lake had receded from the platted meander line, or which meander line had been carelessly run a mile from the water's edge, there would be room for discussion as to how far the Government ought to be bound as against its grantee, or how far the grossness of mistake or vast extent of added area ought to be considered. But, if there *never* was any lake at all, then there is nothing upon which to base interpretation or discussion. There is no *locus* upon which to fasten any meander line. No water to become the actual and visible monument. No injury is done to the vendee in not being allowed to go to that which does not exist. Every reason for maintaining the integrity of the plat having failed, no Court is going to insist upon a blind and obstinate enlargement of the rule. If it did so the rule would be injustice, not justice.

There being no lake opposite the lot as delineated are the rectilinear sides of the lot to be prolonged indefinitely until, perchance, they strike a lake? Such a proposition is absurd.

Is the lot to be moved laterally, as it were, till it is opposite a lake? The very question is absurd.

Is a lake to be excavated as outlined on the plat? This suggestion is also absurd.

Is the meander line as platted to be accepted as the boundary? There being no lake—in fact, no actual water to resort to as the better monument—the meander line as platted seems the only resort, and this conclusion seems the only rational one. This was the conclusion of the lower and Supreme Courts of Oregon. The verdict of the jury settles the fact that at the time of the grant, and of the survey, and now, there was and is no lake as platted. That so far as man can tell there never was a lake in that region which would be intersected by the projection of the rectilinear sides of plaintiff's lot. Therefore, as there is not and never was a lake in fact, the purchaser of the lot is limited to its platted boundaries, including the meander line as delineated.

The following cases seem to us to bear out the foregoing:

Niles vs. Cedar Point Club, 175 U. S., 300.
Horne vs. Smith, 159 U. S., 40.
County of Cook vs. Calumet, etc., 138 U. S., 635.
Hamilton Bridge Co. vs. Illinois, 175 U. S., 633.
Telluride Power Co. vs. Rio Grande, etc., 175 U. S., 639.
Hammond vs. Johnson, 142 U. S., 73.

## III.

## THE INSTRUCTIONS GIVEN BY THE TRIAL COURT WERE FAIR AND WITHOUT ERROR.

Unless the jury was wrongly instructed, its verdict is conclusive that there was no lake at the time of the survey. The instructions, examined as a whole, are very fair, and indicate that the plaintiff could have had any instruction as to clear and settled law which it might have requested. It will be remembered that all that is shown here of the evidence and the Court's charge is by the plaintiff's own bill of exceptions. The instructions begin on page 48 of the record, and may be summarized as follows :

1st. The principal question for decision is the fact whether the defendant's lands were accretions to the plaintiff's adjoining lands.

2d. Sets out the Swamp Land Act and its effect, and that no definite tract passed to the State till approved by the Secretary of the Interior.

3d. That if plaintiff's lot abutted on the lake and it was unnavigable, then his ownership extended to the centre of the lake.

4th. That the owner of a lot delineated on a field and approved plot abutting on a non-navigable lake is entitled to all accretions by deposit or receding, even to the centre of the lake.

5th. No difference how accretion is made—naturally, artificially, suddenly or gradually.

6th. Survey plat is conclusive as to the meander line.

7th. Government has a right to declare and fix the place of the lake for purposes of survey and sale of land, and after rights have intervened such survey and plat cannot be disputed.

8th. Meander lines are not the real boundaries. The channel of the river or centre of the lake is the real boundary.

9th. Cannot question a United States patent collaterally.

10th. If plaintiff was the owner of lots 3 and 4 on south side of Malheur Lake, defendant could no more rightfully detain the land in controversy than he could lots 3 and 4.

11th. If the Government in 1877 made an approved survey of the south side of Malheur Lake, which was the north side of lots 3 and 4, no one can disturb this, though at time of survey there were actually lands between the meander line and the water.

12th. The middle of the road or body of non-navigable water, is the true boundary not the meander line.

13th. If plaintiff was the owner of lots 3 and 4, and there are lands between the meander line of those lots and the lake itself, plaintiff is owner of the intervening lands, provided plaintiff is not estopped as pleaded,

14th. Estoppel fails if at time of the acts pleaded title was not in plaintiff.

15th. A lake is a body of water collected in a hollow of the earth. It is not necessary that it be wholly open.

The foregoing were given at plaintiff's request.

The following given at defendant's request were excepted to :

P. 51 of the Record.

1st. Plaintiff must succeed by his own title, and must convince you of the preponderance of evidence.

This is correct law. If no further instructions were given showing that the record title sustained the burden of proof and plaintiff had denied further explanation, it is evident it could have had them.

It is also evident that this could not and did not mislead the jury or anyone.

2d. The existence of a *meander line* is not conclusive as to the existence of a *lake.*

This seems to us sound for the reasons already given. The plats are conclusive as to the *meander* line. If there was a lake, the plaintiff would take all land between the meander line and the water, and all accretions ; but if there were no lake at the time of platting, there could be no intervening land and no accretion by reliction.

3d. To the effect that a swamp is not a lake.

This is true in fact and law. Had the land been swamp at the time of the survey, the State of Oregon was entitled to it as *swamp*—not as *riparian* owner. While it may be true a riparian swampland owner takes riparian rights, we do not understand it to be

true that an abutting owner on *mere* swampy land takes that swampy adjacent land by riparian right.

4th. To the effect that any preponderance of evidence must show that about March 12, 1860, said lots were bounded on the north by Malheur Lake.

5th. Preponderence of evidence must show that said lots bordered on the meander line, and that land in question is due to accretion.

It is not fair to any *nisi prius* court to split hairs and draw fine verbal distinctions.

Counsel insisted in argument on the misleading quality in such words as "adjoining" (14th Except., p. 51), "immediately north of" (15th Except., p. 51), "bounded on the north by" (16th Except., p. 52). But review the entire instructions so far as they appear here, and it becomes apparent that the use of such words was well qualified and interpreted by the careful instructions; that the owner of lots bounded by a meander line took to the water regardless of the meander line; that all lands made by reliction were the property of the riparian owner; that the meander line was conclusive; that the only questions open to them (the jury) were: Did plaintiff have title to Lots 3 and 4? Was there a lake in front of Lots 3 and 4? And, if both questions were answered in the affirmative, then, by conclusion of law as given by the Court, the owner of Lots 3 and 4—that is, the plaintiff—took all land intervening between the meander line and the lake no matter how much. We submit the jury had the law fairly and clearly given to them as a whole. They well understood the whole situation. If one indulged in refinements one could say that "immediately

in front of " might mean immediately to the north of, though a mile away. "Adjoining" and "bounded by" might mean the lots were in *law* "adjoining" or "bounded by;" that is to say, disregarding the meander line the prolongation of the lots, as authorized by law, touched the water or "adjoined" it.

## Conclusion.

There is no error in this record. Certainly no prejudicial error. According to the record Mr. Lair Hill only came into the case for the purposes of the writ of error. His assignments of error are his own interpretations stated in his own language. The only record of what the Court charged or refused to charge is the bill of exceptions.

This record is plaintiff's own, and he is bound by it. If there be inconsistencies they must be decided against him. We add these remarks because counsel in argument insisted there were inconsistencies between the assignment of error and the charge to the jury, as shown by the bill of exceptions.

Respectfully submitted,

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desired
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